IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 14TH FEBRUARY 2008 / 25TH MAGHA 1929

CRP.No. 317 of 2007()

AGAINST THE ORDER DATED 08/03/2007 IN IN EA 43/07,EP 57/06 IN OS.65/1999 of MUNSIFF COURT, PERUMBAVOOR

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REVISION PETITIONER: PETITIONER/JUDGMENT DEBTOR:

THANKAMMA, AGED 75, W/O. PADMANABHAN, NADUKKUDIPARAMBIL, PONJASSERRY, ARACKAPPADY VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.JOY GEORGE
SMT.PRAICY JOSEPH

RESPONDENT: RESPONDENT/DECREE HOLDER:

SHEELA, AGED 45, D/O. SUBRAMANIAN, THACHANGATTU HOUSE, ALLAPRA, VENGOLA VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.DINESH R.SHENOY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/02/2008, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

I.A.No.2766 OF 2007
IN
C.R.P.No.317/2007

Dated this the 14th day of February, 2008

O R D E R

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It is an application filed for enlargement of time for payment of Rs. 20,000/-. The brief facts necessary for the disposal of the matter is stated as follows:

2. Against the order for sale a revision was preferred before the court and this court by its judgment dated 29.6.2007 directed to make payment of Rs.20,000/- on or before 5.7.2007 and to make the balance payment within three months from 5.7.2007. Thereafter, the revision petitioner did not pay the amount in time and filed I.A.No.2489/2007 to extend time for payment of the amount by three months from 5.10.2007. This court extended the time for payment till 5.12.2007 and also directed the revision petitioner to pay an amount of Rs.20,000/- within one week. The court also directed to file an application for review regarding the confirmation of sale. Thereafter, another application is filed as I.A.No.3049/2007 whereby it is seen that a Demand Draft for Rs.1,21,600/- had been taken on

4.12.2007 whereas the final date fixed is 5.12.2007. There was an offer before this court to hand over the draft to the counsel then appearing but it was not received on account of non instruction from the client for which the said advocate cannot be blamed. The factual matrix is very short that this court fixed some time for payment and quantified the amount Rs. 20,000/- to be paid within a stipulated period which was not complied with and time was extended for making the final payment till 5.12.2007 by this court and there has been an offer to pay the amount which is evidenced and produced by the production of a photocopy of the Demand Draft before me and tendering the original draft to the counsel. It is true that the amount of Rs. 20,000/- has not been paid in time.

3. It is the case of the respondent in the revision petition that on account of the attitude of the present revision petitioner in not returning the amount which he had borrowed, the respondent lost his residential property even and the attitude of the revision petitioner is to live luxuriously but to deprive a living for the decree holder. In these type of cases, I feel that the principles of equity, justice and good conscience may have to prevail rather than the specific provision of law which may be too technical to render substantial justice to the parties.

4. I am conscious to the fact that when the sale is confirmed what are the drawbacks of a judgment debtor. But it is to be stated that the matter was before this court and the court has extended time. But there was a direction also for confirmation of sale on non payment of Rs. 20,000/-. Whether a right which has been conferred upon the party to set aside sale of his property is to be totally withdrawn when he fails to pay the amount of Rs. 20,000/- within the stipulated time is the larger question that is to be considered. Viewing in any angle, it may not be just and proper to deprive him just because there is a default. The total amount which is ordered to be paid has been attempted to be paid within the extended period of time fixed by this court which indicate that the manifest intention of the party to comply with the direction of this court. It is true that the decree holder may have substantial grievance regarding the act and conduct of the revision petitioner, but one could not adopt an attitude whereby the whole fabric of goodness is being done away with. But for the laches, I feel the revision petitioner may have to be directed to pay something more and I crystalise it at Rs. 10,000/-.

Therefore, the matter is disposed of as follows:

I grant permission to the revision petitioner to move an

application for setting aside the sale which has been confirmed and when the amount due under the decree + costs + 5% discount which the person is entitled to and the execution cost + Rs.10,000/- is calculated and paid or deposited in the court, the court below shall set aside the same and dispose of the matter and if the amount is not received by the decree holder let it be deposited in the court which can be withdrawn by him as and when he pleases.

The I.A. is disposed of accordingly.

The amount has to be deposited along with the review application if he has not already filed within a period of two weeks from today. I hope and pray that the revision petitioner will not come to this court again for further ventilation of this grievance.

(M.N.KRISHNAN, JUDGE)

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